

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 628/2001

(Old No. 10724 of 1988)

Bal Deo Singh

.....Applicant

Versus

State of Uttaranchal and others

..... Respondents

Hon'ble Irshad Hussain, J.

None appear for the petitioner. Heard Sri A. Rab learned Addl.G.A. and perused the record.

The petitioner-Bal Deo Singh and one Ved Prakash were acquitted of the charge under Section 60 of the Excise Act per judgment and order dated 2.4.1987 passed by the then CJM, Pauri Garhwal in view of the fact that charge-sheet was filed after more than a year from the date of occurrence without the sanction of the State Government as is required under Section 70 of the Excise Act. After the judgment of acquittal was recorded the required sanction under Section 70(2) of the Excise Act was accorded by the State Government on 15.3.1988 and again on the same charge the charge-sheet was filed before the CJM, Pauri Garhwal. On it the learned CJM took cognizance against the petitioner-accused per order dated 9.5.1988. The revision was preferred on the ground that once the petitioner-accused had been acquitted of the charge he cannot be tried for the same offence again and the prosecution is barred under Section 300 of the Code of Criminal Procedure as well as under Article 22 of the Constitution of India. There can be no doubt that it would be a case of double jeo-pardy if the petitioner was to be tried for the same offence again in pursuance of the cognizance taken by the impugned order dated 9.5.1988. The order of taking cognizance is thus illegal and the same is liable to be quashed. The revision is allowed and order dated 9.5.1988 is quashed and the proceedings of the criminal case no. 1429/1985 are dropped. Consign.

Dated 05.04.2004

(Irshad Hussain, J.)

Rawat